



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0016]

RIN 1625-AA00

Safety Zone; Bayou Chene Beginning at Mile 130.0 on the Atchafalaya River Extending Through the Bayou Chene Ending at Mile 85.0 on the Intercoastal Waterway Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary emergency safety zone for all waters of the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway. The emergency safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with high waters. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City (COTP). Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on February 29, 2016. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on January 7, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0016 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Vanessa Taylor, Chief of Waterways, U.S. Coast Guard; telephone 985-380-5334, email Vanessa.R.Taylor@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is immediate need for additional safety measures due to the increased safety risks caused by high waters on the Atchafalaya River that result in

back flooding through five surrounding parishes. On January 5, 2016, the Coast Guard determined that immediate action is necessary to establish an emergency safety zone to protect life and property from the hazards associated with and resulting from high waters. It is impracticable to publish an NPRM because we must establish this safety zone by January 7, 2016. Broadcast Notices to Mariners (BNM) and information sharing with waterway users will update mariners of enforcement times and any changes to the schedule during this emergency situation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with and resulting from high waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Morgan City determined that potential hazards associated with and resulting from high waters and potential back flooding in surrounding areas require additional safety measures. This rule establishes a temporary emergency safety zone beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway to protect those operating in the area and assist the Coast Guard in maintaining navigational safety.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary emergency safety zone prohibiting access to the Bayou Chene extending the entire length of the waterway of the rivers beginning at 8:00 a.m. on January 7, 2016, through February 29, 2016, or until waters recede and conditions allow for safe navigation, whichever occurs earlier. Deviation from the emergency safety zone may be

requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 985-380-5375 or can be reached by VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule establishes a temporary emergency safety zone placing restrictions on vessels transiting the Bayou Chene. Notifications of enforcement times and any changes to the schedule will be communicated to the marine community via BNM. The impacts on navigation will be limited to ensure the safety of mariners and vessels during hazardous conditions associated with high waters.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V. A. above, this rule will not have significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively

have a significant effect on the human environment. This rule involves an emergency safety measure limiting access to the area described as the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 of the Intercoastal Waterway. This emergency situation requires a safety zone lasting longer than one week so a preliminary environmental analysis checklist and a categorical exclusion determination are being prepared and will be made available as indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0016 to read as follows:

§ 165.T08-0016 Safety Zone; Bayou Chene, beginning at mile 130.0 on the Atchafalaya River extending through the Bayou Chene ending at Mile 85.0 on the Intercoastal Waterway Morgan City, LA.

(a) Location. The following area is a safety zone: All waters of the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officers operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Morgan City in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16, or through Coast Guard Marine Safety Unit Morgan City at 985-380-5334. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement periods. This rule is effective from 8:00 a.m. on January 7, 2016 through 11:59 p.m. on February 29, 2016 or until waters recede and conditions allow for safe navigation.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through broadcasts notice to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: January 6, 2016.

D.G. McClellan,

Captain, U.S. Coast Guard,

Alternate Captain of the Port Morgan City.

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